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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ALBERTO OCHOA,

Plaintiff,

-vs-

JOSE LOPEZ, et al.,

Defendants.

Case No. 20-cv-2977

Chicago, Illinois

January 27, 2023

11:33 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE YOUNG B. KIM, MAGISTRATE JUDGE

APPEARANCES:

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****PLEASE NOTIFY OF INCORRECT SPEAKER IDENTIFICATION****
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1 (Proceedings heard in open court:)

2 THE CLERK: Calling case 20 CV 2977, Ochoa versus
3 Lopez, et al.

4 THE COURT: Please approach the podium. Good
5 morning.

6 MS. BONJEAN: Good morning, your Honor. Jennifer
7 Bonjean, B-O-N-J-E-A-N, on behalf of the plaintiff, Mr. Ochoa.

8 MR. MILLER: And Graham Miller on behalf of the
9 defendant detectives.

10 MR. HALDEN: Good morning, your Honor. Zac Halden
11 for the City of Chicago.

12 THE COURT: Oh, you just filed your appearance,
13 right?

14 MR. HALDEN: Yes, your Honor.

15 THE COURT: Okay. Thank you.

16 MR. HALDEN: We did not file a pleading.

17 THE COURT: Got it.

18 So let me ask the question of Mr. Miller, and then I
19 will give Ms. Bonjean an opportunity to respond to detectives'
20 arguments.

21 I'm curious about this statement in the response, and
22 I'm quoting from page 11 of the response: "Defendants have
23 learned from Cook County gang intelligence personnel that
24 these calls contain evidence of plaintiff's gang membership."

25 MR. MILLER: Correct.

1 THE COURT: How do they know?

2 MR. MILLER: I believe that they have listened to
3 some of the calls. They monitor the calls between, you know,
4 known gang members in the prison as part of their duties.

5 THE COURT: So did the gang intelligence personnel
6 contact the detectives? How did this come about?

7 MR. MILLER: I contacted gang intelligence personnel
8 investigate -- so back in the criminal case, there was -- the
9 prosecution had attempted to call one of these gang
10 intelligence personnel to testify.

11 So I spoke with him and through him spoke with some
12 of the other guys there. I was inquiring generally about
13 Mr. Ochoa's gang involvement in the prison, what they knew
14 about it, whether there were any leftover gang intelligence
15 files because we don't believe we got everything from Cook
16 County in the subpoenas, and they indicated to me that, you
17 know, they believe that calls with another Latin Kings gang
18 member, that there's been a number of them and that these
19 would just establish evidence of Mr. Ochoa's gang involvement
20 with the Latin Kings.

21 THE COURT: And what's your basis for making the
22 assertion that Mr. Raul Molina is a Latin King member?

23 MR. MILLER: Part of these gang intelligence
24 personnel, part of their job is knowing, you know, who is
25 affiliated with gangs in the prisons, you know, the different

1 gangs who are rivals. I mean, for safety concerns, among
2 other things, they're taxed with knowing that information. So
3 that's information that they get.

4 THE COURT: And when you contacted the gang
5 intelligence personnel, I take it you didn't need a formal
6 subpoena to ask questions of the personnel?

7 MR. MILLER: I don't believe so. I think we can
8 conduct our own investigation and talk to, you know, whoever
9 may have information.

10 THE COURT: Because I got the sense from the last
11 time we were in court there was somewhat of a firewall between
12 departments and whatnot, and formalities have to be honored or
13 observed.

14 MR. MILLER: I mean, obviously, you know, we've
15 subpoenaed these records as well, but I don't think there's
16 any rule against us conducting our own investigation. They
17 don't have to talk to us, of course, I mean, but I've called
18 and said, hey, what do you know about this guy, and they were
19 willing to say, yeah, I know him. You know, we have
20 information about him.

21 THE COURT: Okay. Can you explain to me your
22 footnote 1? I'm not following.

23 So initially the subpoena went out asking for calls
24 between Mr. Molina and the plaintiff taking place between
25 December 19, 2019 to the present, right?

1 MR. MILLER: Correct. That was just a mistake on my
2 part. December 19th, which actually happens to be my
3 birthday, but I think that I wasn't thinking about that; I
4 think I was thinking about that was the day of -- it was
5 either the murder or the day of his confession. Whatever it
6 was, that was a mistake. It should have been October 23rd,
7 2019, which is the date he was released.

8 THE COURT: So you need additional calls from
9 October 23, 2019 to December 19, 20 --

10 MR. MILLER: Correct.

11 THE COURT: -- 19.

12 MR. MILLER: Correct. For completeness, we would
13 like --

14 THE COURT: So two months.

15 MR. MILLER: Approximately two months, correct.

16 THE COURT: But you already have in your possession,
17 what, 20 --

18 MR. MILLER: So we have.

19 THE COURT: -- almost two-and-a-half years worth of
20 calls?

21 MR. MILLER: Correct.

22 THE COURT: How many calls did you actually receive?

23 MR. MILLER: I think it was close to 500 calls. I
24 don't know the exact number. We've only listened to a
25 small --

1 THE COURT: And these calls are, at least based on
2 your subpoena, only calls between Molina and plaintiff?

3 MR. MILLER: Correct. That was what was in the
4 subpoena. Plaintiff's counsel has pointed out that there
5 apparently are other calls between Molina and other
6 individuals, is that -- or between plaintiff and -- I believe
7 other individuals apparently or other numbers.

8 THE COURT: Let me ask you, prior to the filing of
9 this motion on January 17, 2023, have you listened to any of
10 the calls, and have you confirmed whether plaintiff has said
11 anything to indicate that he was, in fact, a gang member?

12 MR. MILLER: So we listened to a very small
13 percentage of the calls. As we set forth in the motion, by
14 the time we realized we had the calls, it was December 13th or
15 12th, and we started downloading them, and then we sent them
16 to plaintiff's counsel. Plaintiff's counsel objected when she
17 received them, so we had only listened to whatever we had, you
18 know, a chance to go through that night.

19 I had maybe listened to five calls. Part of the
20 problems they switch back and forth from English to Spanish.
21 The way it appears to me is that when they kind of start
22 talking about business, they kind of switch into Spanish.
23 And, you know, I don't know. I would have to listen to them
24 more carefully. I can't tell you that there's -- you know,
25 affirmatively that I've had evidence so far.

1 THE COURT: And Mr. Molina, how old is he, do you
2 know?

3 MR. MILLER: I'm not sure.

4 Oh, you know, it might be on the subpoena.

5 We may have used it as an identifier for Mr. Molina.

6 Sorry, your Honor, one of these exhibits is the
7 subpoena.

8 THE COURT: Should be the subpoena, right?

9 MR. MILLER: Yeah.

10 (Inaudible.)

11 MR. MILLER: We don't have it on the subpoena. We
12 just have the CB number of the -- oh, here it is, DOB,
13 2/15/94.

14 THE COURT: How old is Mr. Ochoa?

15 MS. BONJEAN: Mr. Ochoa is -- he is -- well, let me
16 do the math real quick because I don't have his birthday
17 memorized, but the incident happened in 2002. He was in his
18 early 20s in 2002, so he's significantly older.

19 THE COURT: Okay. Thank you.

20 All right. Let me give you an opportunity,
21 Ms. Bonjean, to respond to the detectives' opposition to the
22 motion.

23 MS. BONJEAN: Yes, Judge.

24 So, first of all, I want to clarify. What was
25 produced was not just Mr. Molina's calls. What was asked for

1 were calls from Mr. Molina to Mr. Ochoa, and what was sent was
2 every call that's ever been made to Mr. Ochoa from Cook County
3 Jail, which, as you can imagine, might be quite a few because
4 that's where he had spent the last 17 years of his life.

5 So it wasn't just Mr. Molina's calls. It was other
6 people, other inmates, you know, friendships that he had made
7 with individuals because he had been in Cook County for long.
8 So about 25 percent of those calls, at least according to the
9 call log, I believe, are not Mr. Molina at all. They're just
10 other people.

11 THE COURT: Meaning other detainees from the county
12 jail calling out to Mr. Ochoa?

13 MS. BONJEAN: Yes, yes.

14 THE COURT: Okay.

15 MS. BONJEAN: So what Cook County Jail did, I think,
16 is just every call that was ever made to Mr. Ochoa is my
17 understanding.

18 Again, one of my primary issues is that it was my
19 belief that the defendants knew our objection to any sort of
20 blanket approach to this, and we had what I thought, at least
21 the spirit of an agreement in place that you will let me know
22 if you have some calls that you want to get at and you think
23 there's a reason for it.

24 They did not. In fact, Mr. Molina's name appears
25 absolutely nowhere. They have some private conversation with

1 gang intelligence officers. They claim through -- again,
2 there are no documents. There's been no production of any
3 gang intelligence reports, absolutely nothing that creates a
4 nexus between my client and the Latin Kings.

5 My client has been very open and testified, yeah, I
6 was friends with Latin Kings. I hung out with Latin Kings. I
7 was in prison for 17 years. But, no, at the time of this
8 murder, I was not. I was in this country six, nine months at
9 the most. I lived in a neighborhood that was -- had many gang
10 members in it. When I went to prison, I certainly had friends
11 who were gang members.

12 I -- so this idea that he is a Latin King, all we
13 have is some third-hand evidence from a gang intelligence
14 person who never testified at any -- at Mr. Ochoa's trial, and
15 we've had no reports or any discovery on that.

16 So, you know, I'm just taking the defendants' word
17 that they believe that this will include some evidence that he
18 is in a gang, which I am not sure is entirely relevant even if
19 it was true, since it's now 2019. Whether Mr. Ochoa is
20 currently in a gang seems to me of far less relevance than
21 whether he was in a gang in 2002, which is really the crux of
22 this case.

23 It's not as if he is denying all associations in the
24 sense of I had no friends, I never talked to any gang members.
25 He's never said that. He's always admitted that since his

1 time in jail.

2 I think that to -- I don't know whether Mr. Molina is
3 in a gang, but I'm going to assume that the gang intelligence
4 officers for the moment seem to think that he is.

5 Going through, you know, hundreds of calls between my
6 client and someone they believe is a gang member to ultimately
7 find out what they believe they will find out, which is that
8 he has some association with the gang, you know, I think our
9 position is that that is an intrusion that is not justified
10 and that they need to show more.

11 For example, if they showed us the gang intelligence
12 reports. Show me the gang intelligence reports that show some
13 connection, where the gang intelligence officers say, well, we
14 know Mr. Ochoa is in a gang because of this, this and this.

15 The case law has pretty much, I think, taken the
16 position that if we're going to allow you to sift through
17 phone calls, we want to see something in the evidence,
18 something in the discovery that already makes this nexus for
19 us, and then -- because until then, this is just, again, the
20 defense team apparently having off-the-record conversations
21 with some gang intelligence officers that is not backed up by
22 anything.

23 They haven't even put Mr. Molina on their Rule 26(a)
24 disclosures because, as Mr. Miller admitted, well, we don't
25 know if there's anything there. And even though he doesn't

1 speak Spanish, he's just speculating that maybe they're
2 talking about business. I mean, you know, again, this is just
3 wild speculation at this point.

4 And so I think -- I think at a minimum, we should see
5 some evidence that the gang intelligence officers of the Cook
6 County Jail -- by the way, who were never around in 2002, to
7 be clear. These gang intelligence officers came on to in the
8 mid-2000s. I think one of them only started working as a gang
9 intelligence officer in 2017. So we're not talking about gang
10 intelligence officers who have any knowledge about my client
11 back during the relevant time period from our perspective.

12 So I think that's kind of our position at this point,
13 that they need to show a little more before they're allowed to
14 just -- before they should be permitted the opportunity to
15 sift through all of these phone calls.

16 And I do think it's problematic that the
17 defendants -- it's unfortunate we missed it, but the
18 defendants continue to issue subpoenas to third parties, such
19 as Cook County Jail, without making any effort whatsoever even
20 when they know someone's represented to make sure that their
21 interests are being protected or they have the right to voice
22 an objection, Mr. Molina being one of them, Mr. Bentazos and
23 Mr. Simon twice now, and then even another inmate from the
24 Illinois Department of Corrections.

25 It's just a recurring theme that invariably, it's,

1 you know, maybe not going to intrude on my client's rights as
2 much, but I shouldn't be the person having to give notice to
3 all these -- the public defenders that their clients may be
4 negatively impacted and that they do have some privacy
5 interests.

6 So, you know, that's sort of a separate note, but it
7 is a recurring issue that is concerning. But I think at
8 bottom, they need to give us something a little more, the gang
9 intelligence reports at least, that, you know, back up what
10 these gang intelligence officers are allegedly saying that
11 we've never heard about, at least plaintiffs haven't heard
12 about.

13 THE COURT: Anything else?

14 MS. BONJEAN: No, your Honor.

15 THE COURT: Mr. Miller?

16 MR. MILLER: No, your Honor. I would just point out
17 that Mr. Ochoa has unequivocally denied any involvement ever
18 in being part of a gang. The closest he's come is saying I
19 may have used their handshake and called other gang members
20 brother, but, you know, this isn't the case where he said,
21 well, I wasn't in a gang back then, but maybe I joined in
22 prison, you know, for protection or something. He said I've
23 never been affiliated with the Latin Kings. So we believe
24 that these calls will establish that's not true.

25 THE COURT: Okay. Thank you.

1 First of all, I do agree with the defendant
2 detectives that the motion itself is untimely. We shouldn't
3 be talking about quashing or a protective order regarding a
4 subpoena after the subpoena has been served and after the
5 respondent has actually produced documents in response to that
6 subpoena.

7 But obviously relevance and 26 -- Rule 26 parameters
8 are still important, and when I saw the motion, my first
9 reaction was the same thing, I think same reaction you had,
10 Ms. Bonjean, what relevance do these calls have and do you
11 have any factual basis to even look at these calls?

12 And that's why I started out the hearing with the
13 question as to how do these intelligence officers know; and
14 according to Mr. Miller's representation, they listened to
15 some of these audio recordings, which I guess it's their job
16 to listen to these recordings.

17 And that is sufficient for me that there is some
18 reasonable basis for looking into this particular universe of
19 information. And in terms of other calls being produced,
20 that's easy to be remedied, simply that defendants are to
21 limit their view, I should say listening of the calls to those
22 calls specifically initiated by Mr. Raul Molina.

23 But I do understand even that might be problematic
24 because Mr. Molina, I don't know how this phone thing works,
25 but Mr. Molina may have given his code or whatever to others

1 to make phone calls. And if that's the case, then, you know,
2 I'm not going to stop the defendants from listening to those
3 calls because it's going to be harder at that point.

4 So if -- so let me ask the question: How are these
5 calls tracked? I mean, Cook County, my guess is that they
6 simply put in the cell number and just collected everything
7 pertaining to that particular cell number.

8 But what do you mean when you say Mr. Molina may have
9 given his number or information to others to make phone calls?

10 MR. MILLER: Right, you know, and I don't know that's
11 what happened in this case. I mean, what often happens is,
12 you know, inmates will use other inmates' accounts to call
13 out, or on the other end, they will talk to another person
14 through somebody else's phone number.

15 You know, this is a little tricky because I can't
16 tell whether Molina is actually on these calls without
17 listening to them.

18 THE COURT: But when you say account number, what do
19 you mean? I mean, I thought the receiving end has to pay for
20 the call.

21 MR. MILLER: Yeah, you can -- well, I don't know
22 exactly how that works. I just know that we have -- you know,
23 we have situations where one -- it's tracked to one inmate,
24 but it's, in fact, the other inmate making the call.

25 THE COURT: Okay. So let me go ahead and continue.

1 MR. MILLER: Yeah.

2 THE COURT: You know, to the extent that the calls
3 can be identified to be Mr. Molina initiating the call, I'm
4 going to allow the detective defendants to listen to those
5 calls.

6 We talk about, and, Ms. Bonjean, you raise a good
7 point, you know, what difference does it make if those calls
8 tend to raise an inference that Mr. Ochoa is a member now? I
9 get that. But that's a battle to be fought in a motion in
10 limine before Judge Valderrama as to whether there is any
11 probative value to those calls if there are any calls. We
12 don't know that yet.

13 So that is something that needs to be addressed
14 before Judge Valderrama if any calls are to be identified as
15 evidence. The fact that Mr. Molina has not been identified,
16 you know, that's really not germane to this particular
17 analysis because defendant detectives are working off of
18 information received from others, not from Mr. Molina.

19 In terms of the privacy interests, in terms of
20 notifying attorneys, I get your concerns. It would be nice if
21 everyone was notified, but I'm not sure that there is any
22 obligation on the part of the County because it's their
23 record, right? And the subpoena is served on the County.

24 And so technically speaking, I'm not sure that the
25 County has to notify anyone. I mean, it is their business

1 record, and all the callers know that these calls are not
2 private.

3 So for those reasons, the motion for a protective
4 order is denied. I will indicate in the order today that only
5 calls initiated by Mr. Molina to plaintiff can be listened to.

6 Again, the other thing that I would mention is that
7 the burden really is not on the plaintiff in terms of
8 listening to the calls, so the plaintiff doesn't have to do
9 anything at this point.

10 Defendants will have to do the work in terms of going
11 through the calls and listening to the calls and identifying
12 any relevant calls.

13 Now that you're here, let me ask you, do we have
14 another status hearing set in this case?

15 MR. MILLER: That's a good question, Judge.

16 We did file a joint status report back in January,
17 but I don't know whether --

18 THE COURT: Yes, we have one set for February 3rd, it
19 looks like.

20 MS. BONJEAN: Yes.

21 MR. MILLER: Oh, right, it's next week. Yes.

22 THE COURT: So let me ask these questions.

23 I have on my notes I have -- in my notes I have these
24 names, Dr. Enoch Anaglate, E-N-O-C-H, A-N-A-G-L-A-T-E. She
25 was supposed to have been deposed on December 13th. Kenny

1 Thigpen, a 404(b) witness, to be deposed on December 21, 2022.

2 MS. BONJEAN: Yes, they were deposed, both of them.

3 THE COURT: Scheduled -- Arturo Simon was supposed to
4 have been deposed on January 11th, 2023. Yes?

5 MS. BONJEAN: Yes.

6 THE COURT: Daniel Ochoa to be deposed on January 13?

7 MS. BONJEAN: Yes, Judge. He -- he was deposed.

8 Actually, you raise -- this prompts my memory.

9 The defendants reserved one hour. We had agreed -- I
10 had agreed that he -- for a 12-hour deposition because of the
11 interpretation.

12 The defendants reserved an hour to question him about
13 the phone calls because the phone calls were only produced one
14 day before his deposition, so obviously that was a little
15 problematic, not knowing what was in the phone calls.

16 We agreed -- I would ask obviously that, if we're
17 talking about hundreds of phone calls, that the phone calls
18 that they believe are, particularly if they're going to be
19 translating some of these phone calls, that the defendants
20 identify for us what phone calls they think are relevant to
21 this litigation.

22 My client's not particularly concerned about any of
23 the phone calls, but it's -- it just seems to me that they
24 should at least give us a heads up if they're going to spend
25 hours going through -- I mean, it's literally going to be

1 hours of review, so --

2 THE COURT: Do I have this name wrong then? I have
3 Daniel Ochoa.

4 MS. BONJEAN: It's Alberto Daniel Ochoa Piccardo.

5 THE COURT: Ah. So it was plaintiff who was deposed
6 on January 13th.

7 MS. BONJEAN: Correct.

8 THE COURT: And one hour was reserved.

9 MS. BONJEAN: Yes. We did 11 hours, well, in two
10 days.

11 THE COURT: And do you have the date for the second
12 deposition?

13 MS. BONJEAN: It would be the third, but, no, we
14 don't have a date yet because we were waiting on the Court's
15 ruling as it relates to this matter. That's the only subject
16 matter that was reserved on.

17 THE COURT: In terms of identifying calls to be
18 reviewed, I mean, it's really up to the defendants.
19 Oftentimes defendants -- oftentimes exhibits to be produced or
20 discussed at a deposition are considered work product because
21 the identification by the attorney is considered work product.
22 However, if only one hour is reserved, it's up to the
23 defendants how they wish to prepare for that deposition.
24 Obviously, things will go more smoothly and more efficiently
25 if Mr. Ochoa was able to listen to the calls, if any calls are

1 to be questioned about, at the third session.

2 Bryan Holy is still scheduled to be deposed on
3 February 3rd?

4 MR. MILLER: Yes.

5 MS. BONJEAN: I believe that's correct, your Honor.

6 THE COURT: And I've got Adrienne Davis to be deposed
7 on February 28th.

8 MR. MILLER: Judge Davis, there's been a number of
9 reschedulings of Judge Davis, and I don't believe she's set to
10 proceed on that date. It's been moved a number of times.

11 You had the 18th, your Honor?

12 THE COURT: I'm sorry?

13 MR. MILLER: You had the 18th?

14 THE COURT: I have 28th down. This must be from a
15 joint status report.

16 MR. MILLER: Yeah, and I -- oh, I think we moved it
17 to the -- we couldn't do the 28th, and then we moved it to the
18 18th, and now we can't do the 18th. So there is no -- Judge
19 Davis has not been currently scheduled.

20 I am in contact with her attorney. We're just
21 looking for dates that are going to work with everybody.

22 MS. BONJEAN: I have her on the 28th, so I don't
23 know.

24 MR. MILLER: Oh, you do as going? I thought --

25 MS. BONJEAN: I mean --

1 MR. MILLER: Well, we can --

2 THE COURT: Okay. Here's what I'm going to do. I'm
3 going to go ahead and reschedule the February 3rd since you're
4 already -- oh, well, let me finish giving you the opportunity.
5 Any issues you want to raise since you're here?

6 MS. BONJEAN: No, Judge. We will obviously want to
7 now be deposing these gang intelligence officers who were,
8 again, just -- their names were just identified on, I think,
9 January 12th, so they were not originally on the plaintiff's
10 list to depose, but now they will be.

11 But clearly we don't want to depose them until we
12 have all the documents that allegedly they have prepared as
13 part of their gang intelligence work in Cook County Jail,
14 which have been subpoenaed but have not been returned.

15 THE COURT: Let me say this much about the
16 intelligence officers. Unless they are going to be identified
17 as witnesses, I'm not going to allow their depositions because
18 whatever they say won't change what's on the call, right?

19 The calls are the calls. If the calls say nothing
20 about gang membership, then that's it, we end there. If the
21 calls can be interpreted to say that Mr. Ochoa may be in a
22 gang or affiliated with a gang, intelligence officers'
23 testimony isn't going to change what's on those calls.

24 MS. BONJEAN: Well, they have identified them as
25 witnesses, as expert witnesses, too, so --

1 THE COURT: If they are, in fact, identified --

2 MS. BONJEAN: Yeah.

3 THE COURT: -- totally up to you.

4 Anything else? Let's see. What else you were going
5 to say?

6 MS. BONJEAN: We have one other detective that we're
7 working on, I think the City is working on making him
8 available.

9 THE COURT: Any issues from the defendants' side?

10 MR. MILLER: No. We have a -- we have three ASAs
11 scheduled, and then we have -- we are going to issue some
12 written discovery, I think, to try to obviate the depositions
13 of the public defenders.

14 THE COURT: When you say written discovery, what do
15 you mean?

16 MR. MILLER: So requests to admit to the plaintiff is
17 what I think we're going to do to see whether we can obviate
18 those depositions.

19 And then we have a number of 404(b) witnesses where
20 we have dates from plaintiff's counsel. So we're just trying
21 to fit those people in when we can get them served.

22 There's -- two of them are incarcerated, one of them is under
23 plaintiff's control. We have two others served, so I expect
24 at least to be able to get those done.

25 THE COURT: Can you check your schedule for -- I'm

1 || sorry, the City has any issues you want to raise?

2 MR. HALDEN: No, your Honor.

3 THE COURT: All right. Can you check your schedule
4 for March 3rd at 10:00 a.m. This will be by phone.

5 MR. MILLER: That will work.

6 MS. BONJEAN: Yes, your Honor. That works for us.

7 THE COURT: Okay. Well, again, the purpose of this
8 status hearing is to touch base and see if there are any
9 issues we need to work on.

10	Thank you.
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11 MS. BONJEAN: Thank you.

12 MR. MILLER: Thank you, your Honor.

13 MR. HALDEN: Thank you.

14 (Which were all the proceedings heard.)

15 CERTIFICATE

16 I certify that the foregoing is a correct transcript from
17 the digital recording of proceedings in the above-entitled
18 matter to the best of my ability, given the limitations of
19 using a digital-recording system.

20 /s/Kathleen M. Fennell

January 30, 2023

21 _____
22 Kathleen M. Fennell
Official Court Reporter

Date _____

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